JERRY WA DUSING & ANOR v. MENTERI KESELAMATAN DALAM NEGERI MALAYSIA & ANOR; MAJLIS AGAMA ISLAM WILAYAH PERSEKUTUAN (PROPOSED INTERVENER)

HIGH COURT MALAYA, KUALA LUMPUR
HANIPAH FARIKULLAH J
[APPLICATION FOR JUDICIAL REVIEW NO: 25-407-2007]
18 APRIL 2016

CIVIL PROCEDURE: *Intervention – Application for – Judicial review proceedings – Applicants' constitutional right to use the word 'Allah' in religious publications and materials – Application by Majlis Agama Islam Wilayah Persekutuan (MAIWP) to intervene – Whether application ought to be allowed under O. 15 r. 6(2) Rules of Court 2012 (ROC) – Whether application could only be brought under O. 53 r. 8(1) ROC – Whether MAIWP had direct interest in reliefs sought by applicants – Whether power to intervene expressly provided under ss. 4 & 31 of Administration of Islamic Law (Federal Territories) Act 1993 – Implicit power to intervene – Role of MAIWP – Whether considered*

ADMINISTRATIVE LAW: *Judicial review – Judicial review proceedings – Application to intervene – Applicants' constitutional right to use the word 'Allah' in religious publications and materials – Application by Majlis Agama Islam Wilayah Persekutuan (MAIWP) to intervene – Whether application ought to be allowed under O. 15 r. 6(2) Rules of Court 2012 (ROC) – Whether application could only be brought under O. 53 r. 8(1) ROC – Administration of Islamic Law (Federal Territories) Act 1993, ss. 4 & 31*

Vide a judicial review application, the applicants sought several declarations, which essentially related to the applicants' constitutional right to use the word 'Allah' in the Bahasa Malaysia and/or Bahasa Indonesia translation of the Bible as well as in all other religious publications and materials in this country. Majlis Agama Islam Wilayah Persekutuan ('MAIWP'), a body corporate, filed an application to intervene in this proceeding pursuant to O. 15 r. 6(2)(b) and/or O. 53 r. 8(1) of the Rules of Court 2012 ('ROC'). However, the application was opposed by the applicants by contending, *inter alia,* that (i) ss. 4 and 31 of the Administration of Islamic Law (Federal Territories) Act 1993 ('Act 505') defined the role of MAIWP and did not create any legal right or interest which entitled MAIWP to be heard in this judicial review proceeding; and (ii) MAIWP's attempt to stretch its statutory role, powers and duties to justify intervention in this judicial review application where the remaining remedies sought were declaratory reliefs with regards to the applicants' constitutional rights was plainly *ultra vires* its powers under Act 505. To oppose this argument, MAIWP contended that the application should be allowed since the proceedings had been filed in the Federal Territory of Kuala Lumpur where MAIWP had interest and jurisdiction to safeguard the interests of Muslims, especially in the Federal

Territories since the materials in question which contained the word 'Allah' would be distributed within the Federal Territories. The issue that arose for consideration was whether MAIWP qualifies to intervene in this proceeding under O. 15 r. 6(2) and/or O. 53 r. 8(1) of the ROC.

Held (allowing MAIWP's application to intervene in the proceeding):

(1) In *Majlis Agama Islam Selangor v. Bong Boon Chuen & Ors*, it was decided that O. 15 r. 6(2)(b) of the ROC was inapplicable to judicial review proceedings. In the circumstances, MAIWP's application under O. 15 r. 6 was not a proper application due to the specific provision under O. 53 r. 8(1) of the ROC. (paras 13, 15 & 17)

(2) MAIWP was created by s. 4 of Act 505. Pursuant to s. 5 of the same Act, MAIWP was a body corporate with perpetual succession and a corporate seal. Among others, the powers of a corporation created by statute are limited and circumscribed by the statutes which regulate it, and extend no further than is expressly stated therein. Act 505 did not give express power to MAIWP to intervene in this judicial review proceeding. However, the power is fairly implied to the express powers given by ss. 4 and 31 of Act 505. In the circumstances, MAIWP had an implicit power to intervene in this judicial review proceeding. (paras 28, 29, 31, 32 & 33)

(3) By providing general powers to MAIWP under ss. 4 and 31 of Act 505, Parliament must be taken to have intended that MAIWP should perform an overall role in respect of all matters relating to the religion of Islam in the Federal Territories, except for matters of Islamic law and those relating to the administration of justice. The reliefs sought by the applicants to use the word 'Allah' in the Bahasa Malaysia translation of the Bible and other religious publications in this country, including the Federal Territories, may concern the Muslims in this country. Hence, MAIWP being the authority to advise the Yang di-Pertuan Agong on matters relating to the religion of Islam has a direct interest in the reliefs sought by the applicants. (paras 34 & 37)

(4) MAIWP as an authority in the Federal Territories in respect of the religion of Islam have particular knowledge and expertise in the area, *ie,* in terms of the effect which the declaration sought by the applicants may have upon the religion of Islam in this country, particularly in the Federal Territories. In the circumstances, MAIWP could offer a perspective on the right of a non-Muslim to use the term 'Allah' from the Islamic religion perspective. Further, the court could gain much from such intervention even if the argument in the end was not accepted. (paras 42-44)

Case(s) referred to:

Bank Pertanian Malaysia Bhd v. Koperasi Permodalan Melayu Negeri Johor [2015] 9 CLJ 1 FC ***(refd)***

Dewan Pemuda Masjid Malaysia v. SIS Forum (Malaysia) [2011] 4 CLJ 630 HC ***(refd)***

Jerry WA Dusing & Anor v. Menteri Keselamatan Dalam Negeri Malaysia & Anor [2014] 9 CLJ 321 CA ***(refd)***

Majlis Agama Islam Selangor v. Bong Boon Chuen & Ors [2009] 6 CLJ 405 FC ***(dist)***

Malaysia Shipyard & Engineering Sdn Bhd v. Bank Kerjasama Rakyat (M) Bhd [1985] 2 CLJ 427; [1985] CLJ (Rep) 206 SC ***(refd)***

Menteri Bagi Kementerian Dalam Negeri & Anor v. Jill Ireland Lawrence Bill & Another Appeal [2015] 7 CLJ 727 CA ***(refd)***

Menteri Dalam Negeri & Ors v. Titular Roman Catholic Archbishop of Kuala Lumpur [2013] 8 CLJ 890 CA ***(refd)***

Pegang Mining Co Ltd v. Choong Sam & Ors [1968] 1 LNS 96 PC ***(refd)***

Titular Roman Catholic Archbishop of Kuala Lumpur v. Menteri Dalam Negeri [2014] 6 CLJ 541 ***(refd)***

Legislation referred to:

Administration of Islamic Law (Federal Territories) Act 1993, ss. 4, 5, 6, 7, 31

Rules of Court 2012, O. 15 r. 6(2)(b), O. 53 r. 8(1)

Rules of the High Court 1980, O. 15 r. 6(2)(b), O. 53 r. 8(1)

For the applicants - Lim Heng Seng & Tan Hooi Ping; M/s Chris Koh & Chew
For the 1st respondent - Haniff Khatri & Abi Mursyidin; M/s Haniff Khatri
For the 2nd respondent - Azmi Mashud; DPP

Reported by Kumitha Abd Majid

JUDGMENT

Hanipah Farikullah J:

Introduction

[1] Enclosure (13) is the proposed intervener, Majlis Agama Islam Wilayah Persekutuan's ("MAIWP") application to intervene pursuant to O. 15 r. 6(2)(b) and/or O. 53 r. 8(1) (RC 2012).

[2] MAIWP's application is opposed by the applicants.

[3] In gist, the applicants opposed MAIWP's application to intervene on the ground that MAIWP is not 'a proper person' pursuant to O. 53 r. 8(1) of the RC 2012.

[4] This application raises an important question as to the capacity and function of MAIWP as a body corporate that has power to intervene in this judicial review proceeding.

The Background Facts

[5] On 10 December 2007, the appellants filed an application in the High Court at Kuala Lumpur for leave to apply for judicial review, seeking for the following reliefs:

(i) an order for *certiorari* to quash the decision of the Minister of Internal Security to refuse the importation and to withhold delivery of the publications;

(ii) an order for *mandamus* to direct the Minister to return the publications to the appellants; and

(iii) for several declarations, which essentially concern the appellants' and/or their congregations' constitutional right to use the word "Allah" in the Bahasa Malaysia and/or Bahasa Indonesia translations of the Bible as well as in all religious publications and materials (all other publications).

[6] The relevant factual background of this case has been set out in the judgment of the Court of Appeal in the case of *Jerry WA Dusing & Anor v. Menteri Keselamatan Dalam Negeri Malaysia & Anor* [2014] 9 CLJ 321 as follows:

(i) The second appellant is a church incorporated under the Trustees (Incorporation) Ordinance (Cap 148) (Sabah) while the first appellant is the president of the church.

(ii) For the religious education of the children of the members of the church, the appellants brought in seven titles of publications from Indonesia. The publications which consist of Sunday school materials were detained by the customs officer.

(iii) The first appellant's request and appeal for the return of the publications were denied. In a letter dated 24 October 2007 (the said letter), the Ministry of Internal Security explained the basis of the decision as follows (pp. 134-136: rekod rayuan jilid 2):

> 2. Kementerian telah meneliti surat tuan berkenaan penahanan buku bagi pendidikan kanak-kanak Kristian yang diimport dari Bandung Indonesia yang kemudiannya telah ditahan oleh Kementerian di lapangan terbang LCCT pada 15.8.2007.
>
> 3. Kementerian juga mendapati seperti mana di dalam perenggan 4 dan 5 pihak tuan telah membangkitkan beberapa perkara iaitu mengenai kebebasan beragama menurut Artikel II Perlembagaan Negara dan kenyataan YAB Menteri Keselamatan Dalam Negeri mengenai Al kitab yang mengandungi perkataan "Allah" dibenarkan digunapakai di gereja-gereja di Malaysia. …
>
> 3. Perkara 3(1) Perlembagaan Persekutuan, ada menyebut bahawa Agama Islam adalah agama rasmi Persekutuan. Sungguhpun demikian, agama lain boleh diamalkan dengan aman dan damai di mana-mana bahagian Persekutuan. Selanjutnya Perkara 11(1)(3)(a) Perlembagaan Persekutuan menyebut, setiap orang berhak menganuti dan mengamalkan agamanya dan, tertakluk kepada Fasal (4), mengembangkannya, di samping berhak menguruskan hal ehwal agamanya sendiri. Fasal 4, Perkara 11, Perlembagaan Persekutuan tersebut ialah:

Undang-undang Negeri dan berkenaan dengan Wilayah-Wilayah Persekutuan Kuala Lumpur, Wilayah Persekutuan Labuan dan Putrajaya, undang-undang Persekutuan boleh mengawal atau menyekat pengembangan apa-apa doktrin atau kepercayaan agama di kalangan orang yang mengamal agama Islam.

4. Bersesuaian dengan itu, terdapat negeri-negeri yang mewujudkan undang-undang/enakmen negeri masing-masing bagi mengawal pengembangan agama di kalangan orang Islam dengan masing-masing meluluskan perkataan/istilah agama Islam yang dilarang digunakan di dalam bahan penerbitan agama lain selain daripada agama Islam.

...

7. Pada 2.12.1981 Kerajaan telah mewartakan larangan terhadap Al-Kitab di Malaysia melalui Warta Kerajaan P.U.(A) 15/82 di bawah Seksyen 22 Akta Keselamatan Dalam Negeri. Setelah mengambil kira rayuan badan-badan agama Kristian ketika itu, Kerajaan telah memberikan pengecualian khas melalui Warta Kerajaan P.U.(A) 134 bertarikh 13.5.1982 bahawa pemilikan penerbitan atau penggunaan Al-Kitab adalah hanya dibenarkan di dalam gereja oleh orang-orang yang beragama Kristian di seluruh Malaysia.

8. Dalam pada itu, perbezaan perkataan dan jumlah perkataan di dalam undang-undang negeri terus menimbulkan kekeliruan dan kegelisahan di kalangan masyarakat apabila pelaksanaan penguatkuasaan terhadap penggunaan istilah/perkataan di dalam penerbitan agama lain tidak dijalankan secara berkesan. Sehubungan itu, kerajaan telah membuat keputusan pada 19.5.1986 bahawa daripada keseluruhan 16 perkataan larangan, menetapkan empat perkataan iaitu, Allah, Kaabah, Solat dan Baitullah adalah merupakan istilah/perkataan khusus agama Islam yang tidak boleh diguna pakai dalam bahan penerbitan agama lain kecuali bagi menerangkan konsep-konsep berkaitan dengan agama Islam. Berikutan itu Kementerian telah mengeluarkan surat pemberitahuan keputusan Bil KKDN S.59/3/6/A Klt 2 bertarikh 5.12.1986 kepada penerbit-penerbit agama Kristian bagi mematuhi keputusan itu.

9. Kesimpulannya, Kerajaan telah memutuskan penggunaan istilah atau perkataan Allah, Kaabah, Baitullah dan Solat hanya khusus untuk digunakan di dalam mana-mana bahan penerbitan/cetak berkaitan agama Islam dan tidak boleh digunakan di dalam penerbitan agama lain.

10. Walau bagaimanapun, pihak Kerajaan juga membenarkan penerbitan bertajuk Al-Kitab digunakan oleh semua penganut agama Kristian di Negara ini di dalam gereja-gereja sahaja dan tidak di tempat-tempat lain. Kebenaran ini tidak meliputi lain-lain penerbitan agama Kristian selain daripada Bible berbahasa Melayu iaitu Al-Kitab.

A …

12. Melalui penjelasan ini, adalah diharapkan agar pihak tuan dapat memahami isu larangan penggunaan empat perkataan khusus ini. Perlu diingat semua penerbitan agama lain sama ada yang diimport atau yang diterbitkan di dalam Malaysia yang mengandungi mana-
B mana istilah khusus agama Islam adalah dilarang diedarkan di dalam Malaysia. Oleh yang demikian pihak tuan hendaklah melaksanakan keputusan tolak pengimportan/tahan penghantarserahan ke atas penerbitan-penerbitan berkenaan.

(iv) Sometime in January 2008, the publications that were detained were
C released to the appellants. The application in respect of the reliefs for *certiorari* and *mandamus* was accordingly withdrawn by the appellants.

(v) On 5 May 2014, the High Court Judge, Justice Zaleha binti Yusof (now JCA) dismissed the application for leave. In not granting leave to the appellants, the High Court had relied on only one ground, namely that
D it held itself bound by the Court of Appeal's decision in the *Herald*'s case, the Court of Appeal had stated that the word "Allah" is not the essential or integral part of the religion of Christianity (see *Menteri Dalam Negeri & Ors v. Titular Roman Catholic Archbishop of Kuala Lumpur* [2013] 8 CLJ 890 at pp. 932-933 and 963).

E **[7]** The applicants appealed to the Court of Appeal and the Court of Appeal allowed the appeal. Delivering the judgment of the finding of the Court of Appeal, Tengku Maimun JCA *inter alia* held as follows:

> The finding of the Court of Appeal that the word "Allah" is not an integral part of the faith of Christianity had been ruled as a mere *obiter*
F by the Federal Court (See *Titular Roman Catholic Archbishop of Kuala Lumpur v. Menteri Dalam Negeri* [2014] 6 CLJ 541 at p. 584). In the circumstances, we find that the basis for the decision of the learned High Court Judge is no longer sustainable (see *Kerajaan Malaysia & Ors v. Tay Chai Huat* [2012] 3 CLJ 577; [2012] 3 MLJ 149).

G **[8]** Accordingly, the Court of Appeal remitted this present case to the High Court for the High Court to hear the application in relation to the reliefs prayed for in prayers 2(c), (e), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (t), (u) and (v) of encl. (1).

Issues

H

[9] There are really three main issues to be considered by the court. The first is whether O. 15 r. 6(2) applies to MAIWP's application to intervene in this judicial review proceeding. The second is whether MAIWP qualifies to intervene under O. 53 r. 8(1) of the RC 2012. The third is whether MAIWP which is a body corporate created by Administration of Islamic
I Law (Federal Territories) Act 1993 (Act 505) has power to intervene in this judicial review proceeding.

[10] I will deal with the second and third issues together as the facts are intertwined. A

Decision

Whether O. 15 r. 6(2) Apply To MAIWP's Application To Intervene

[11] The first issue which I have to deal is whether O. 15 r. 6(2) of the RC 2012 applied to MAIWP's application to intervene in this judicial review proceeding. B

[12] MAIWP invoked O. 15 r. 6(2) of the RC 2012 in its application to intervene and to be added as a respondent and made a party in this judicial review proceeding. C

[13] I turn to the guidance given by the Federal Court in the case of *Majlis Agama Islam Selangor v. Bong Boon Chuen & Ors* [2009] 6 CLJ 405. The Federal Court in answering the question of "whether O. 15 r. 6(2)(b) of the RHC 1980 applies to an application for intervention in judicial review proceeding" held that O. 15 r. 6(2)(b) of the Rules of the High Court 1980 ("RHC") (now RC 2012) was inapplicable to judicial review proceeding because there is a specific provision dealing with RHC 1980. D

[14] Delivering the judgment of the Federal Court, Justice Zulkefli Ahmad Makinuddin FCJ (now CJM) held as follows: E

> [16] Based on the above well laid-out provisions in the RHC it is evident that the Rules Committee had intended to establish a specific framework for the determination of applications for judicial review. In my view O. 53 of the RHC was specifically drafted for that purpose. It has been revised over time, the last amendment to O. 53 of the RHC having taken place in the year 2000 by which it was substantially revised and amended *vide* PU(A) 342/2000. It is my judgment that O. 53 r. 8(1) of the RHC specifically caters to persons claiming an interest in the proceedings and who wish to be heard in opposition. This is discernible from the language of the rule in particular the phrase "… appears to the judge to be a proper person …". As a specific rule was put in place for judicial review proceeding, the more general basis for intervention under O. 15 r. 6(2)(b) of the RHC cannot be invoked. The maxim "*generalia specialibus non derogant*" would apply. The decision of the majority of the Court of Appeal in the present case that the appellant's application must be brought under O. 53 r. 8(1) of the RHC in my view was therefore correct. Question 1 is therefore answered in the negative. F G H

[15] The result of the decision of the Federal Court in *Boong Boon Chuen*'s case was that O. 15 r. 6(2)(b) of the RC 2012 is inapplicable to judicial review proceeding.

[16] The approach in *Boong Boon Chuen*'s case was followed by the Court of Appeal in the case of *Menteri Bagi Kementerian Dalam Negeri & Anor v. Jill Ireland Lawrence Bill & Another Appeal* [2015] 7 CLJ 727. I

[17] In the light of the authorities and principles cited above, MAIWP's application under O. 15 r. 6 of the RC 2012 to intervene in this case was not a proper application in light of a specific provision under O. 53 r. 8(1) of the RC 2012.

Whether MAIWP Qualify To Intervene In This Judicial Review Proceeding Under O. 53 r. 8(1) RC 2012

[18] Alternatively, MAIWP applied to intervene in this judicial review proceeding pursuant to O. 53 r. 8(1) of the RC 2012.

[19] In support of its application, MAIWP relies upon the following main contentions:

(i) MAIWP must allowed to be named as intervener/third respondent in this case due to the fact that this judicial review application has been filed in the Federal Territory of Kuala Lumpur where MAIWP has interest and jurisdiction to safeguard the interests of Muslims, especially in the Federal Territories because the materials which contain the word "Allah" will be distributed and spread within Federal Territories.

(ii) Although the second applicant is institution of church in Sabah and Sarawak, the second applicant has expanded their institution in the Federal Territory of Labuan and Peninsular of Malaysia.

(iii) MAIWP claims to have an interest in:

(a) all matters relating to laws involving issues and questions about Islam which would affect and/or result in negative impact towards the hukum syarak (Islamic law) specifically and the Muslim community;

(b) with regard to the use of the word "Allah", MAIWP being enjoined to prevent any misunderstanding or misconception among the Muslims and Non-Muslims; and

(c) MAIWP's duty under the Islamic principle, "amal maaruf nahi mungkar" (enjoining what is right and forbidding what is wrong) in seeking to intervene in this judicial review proceeding to prevent any evil or vice (kemungkaran) from treading and/or becoming rampant (menapak dan/atau berleluasa) amongst the Muslim community specifically and the pluralistic society in general.

(iv) MAIWP further claims that if their application to intervene in this judicial review proceeding is denied, the interest of every individual in the Federal Territories and the Islamic community in general will be prejudiced and/or adversely affected to the extent of adversely affecting the integrity ("kewibawaan") of MAIWP.

[20] On the other hand, learned counsel for the applicants submitted that MAIWP is not a 'proper person' who has a 'direct interest' in this judicial review proceeding under O. 53 r. 8(1) of the RC 2012. Central to the arguments advanced by learned counsel for the applicants was that being a statutory body, MAIWP is bound to act within the parameters of their duties, powers and functions under Act 505 as set out in namely ss. 4 to 7.

[21] The submission of learned counsel for the applicants can be summarised as follows:

(i) pursuant to s. 4 and 31 of Act 505 that MAIWP is a statutory body established under Act 505 only to "aid and advise the Yang di-Pertuan Agong in respect of all matters relating to the religion of Islam within the Federal Territories, except matters of Islamic law and those relating to the administration of justice". MAIWP's role in merely aiding and advising does not create any legal right or interest which entitles it to be heard in this judicial review proceeding.

(ii) It is plain that Act 505 has nothing to do at all with the rights of non-Muslim Malaysians and specifically the rights of the applicants and their congregationalist as Christians to profess and practice their freedom of religion which is guaranteed under the Federal Constitution.

(iii) MAIWP's attempt to stretch its statutory role, powers and duties to justify intervention in this judicial review application where the remaining remedies sought are declaratory reliefs with regard to the applicants' constitutional right is plainly *ultra vires* its powers under Act 505.

[22] In this regard, it was submitted for the applicants that the test which MAIWP will have to pass is: "Will his rights against or liabilities to any party to the action in respect of the subject matter of the action be directly affected by any order which may be made in the action?" To support his contention, learned counsel for the applicants relies on the test enunciated by Lord Diplock in *Pegang Mining Co Ltd v. Choong Sam & Ors* [1968] 1 LNS 96; [1969] 2 MLJ 52 which was cited with approval in *Bong Boon Chuen (supra)*.

[23] In the case of *Bong Boon Chuen*, the Federal Court dealt with the question of whether Majlis Agama Islam (MAIS) could intervene as a "proper person" under O. 53 r. 8(1) of the RHC.

[24] On this issue, the Federal Court held that the use of the phrase "proper person" in O. 53 r. 8(1) of the RHC must be read as referring to "persons with direct interest". This is what the Federal Court said:

> It does not stand to reason for a party not having any direct interest to be allowed to be joined as a party, more so in the light of the nature of the jurisdiction being exercised in judicial review proceeding.

[25] In my view, the issue of whether MAIWP has a direct interest to be allowed to be joined as a party, is related to the question whether MAIWP which is a body corporate created by statute, has power to intervene in this judicial review proceeding.

[26] At this juncture, it is important to emphasise that in this present case, the relief sought by the applicants is for several declarations, which essentially relates to the applicants' constitutional right to use the word "Allah" in the Bahasa Malaysia and/or Bahasa Indonesia translations of the Bible as well as in all religious publications and material (all other publications) in this country.

Act 505

[27] In order to appreciate the contrary positions being taken and the issues in this case, it is convenient to set out the relevant statutory provisions.

[28] MAIWP was created by s. 4 of Act 505. It provides:

> 4(1) There shall be a body to be known as the "Majlis Agama Islam Wilayah Persekutuan" to advise the Yang di-Pertuan Agong in matters relating to the religion of Islam.

[29] Pursuant to s. 5 of Act 505, MAIWP is a body corporate with perpetual succession and a corporate seal.

[30] Section 31 of Act 505 provides as follows:

> The Majlis shall aid and advise the Yang di-Pertuan Agong in respect of all matters relating to the religion of Islam within the Federal Territories, except matters of Islamic Law and those relating to the administration of justice, and in all such matters shall be the chief authority in the Federal Territories after the Yang di-Pertuan Agong, except where otherwise provided in this Act.

[31] It is trite that the powers of a corporation created by statute are limited and circumscribed by the statutes which regulate it, and extend no further than is expressly stated therein, or is necessarily and properly required for carrying into effect the purposes of its incorporations, or may be fairly required as incidental to, or consequential upon, those things which the Legislature has authorised. What the statute does not expressly or impliedly authorise is to be taken to be prohibited. (see *Bank Pertanian Malaysia Bhd v. Koperasi Permodalan Melayu Negeri Johor* [2015] 9 CLJ 1 and *Malaysia Shipyard and Engineering Sdn Bhd v Bank Kerjasama Rakyat Malaysia Bhd* [1985] 2 CLJ 427; [1985] CLJ (Rep) 206).

[32] I have carefully perused Act 505 to determine whether MAIWP has the power to intervene in this judicial review proceeding. I agreed that Act 505 do not give such express power to MAIWP.

[33] However, the issue to be considered is whether MAIWP has an implied power to intervene in proceedings involving question of the use of the word "Allah" by non-Muslims in its religious publications in this country (including the Federal Territories). I am of the opinion that the power is fairly implied to the express powers given by s. 4 and s. 31 of the Act. Hence in my view, MAIWP has an implicit power to intervene in this judicial review proceeding.

[34] In my opinion, by providing general powers to MAIWP under s. 4 and s. 31, Parliament must be taken to have intended that MAIWP should perform an overall role in respect of all matters relating to religion of Islam in the Federal Territories (except matters of Islamic law and those relating to the administration of justice).

[35] In the case of *Dewan Pemuda Masjid Malaysia v. SIS Forum (Malaysia)* [2011] 4 CLJ 630, Justice Zabariah Mohd Yusof (now JCA) held as follows:

> [20] Article 3(2) of the Federal Constitution provides that the Ruler of a State shall be the head of the religion of Islam in his State and he enjoys all rights, privileges, prerogatives and power as head of that religion. The manner and the extent of his powers are enshrined and subjected to the Constitution of the relevant State.
>
> [21] As far as Wilayah Persekutuan is concerned, the head of the religion of Islam is the Yang di-Pertuan Agong. The administrations of Islamic Matters are provided by the Administration of Islamic Law (Federal Territories) Act 1993. Section 4 and 5 of the same established the Majlis Agama Islam Wilayah Persekutuan. It defines the powers of the Majlis Agama Islam Wilayah Persekutuan and expressly states that it shall be a body to advise the Yang di-Pertuan Agong in matters relating to Islam. Majlis Agama Islam has the powers and authority to regulate matters pertaining to Islam. These powers were gazette and hence it has legal and authoritative enforcement.

[36] If contrary to my view, MAIWP is not impliedly authorised to apply to intervene in this proceeding, I am of the opinion that the power to do so should be recognised as incidental or consequential upon its general duty to advise the Yang di-Pertuan Agong in matters relating to the religion of Islam in the Federal Territories.

[37] In my view, the reliefs sought by the applicants to use the word "Allah" in the Bahasa Malaysia translation of the Bible and other religious publications in this country (including Federal Territories) may concern the Muslim in this country as contended by MAIWP. Hence, MAIWP being the authority to advise the Yang di-Pertuan Agong in matters relating to the religion of Islam has a direct interest in the reliefs sought by the applicants in this judicial review proceeding.

[38] There remains the question whether Majlis Agama Islam Selangor (MAIS) application to intervene in *Boong Boon Chuen*'s case can be distinguished from this present application by MAIWP. In my opinion, the facts of this present case can be distinguished from *Boong Boon Chuen*'s case.

[39] The Federal Court in its judgment said that:

> … the basis of the appellant's purported interest in the present judicial review proceeding has been stated in terms which would appear to go beyond the scope of the provisions of the Enactment relied upon. Matters of local government do not fall within the objects of MAIS. MAIS had nothing to do with the decisions under challenge in the judicial review proceeding. In any event, it is not directly affected by the decisions sought to be reviewed.

[40] There, the respondents applied for judicial review against the decision of Majlis Bandaraya Shah Alam (MBSA) which had allocated 13.84 acres of land in the respondent's housing estate as a site for Muslim burial ground. The appellant MAIS sought leave to intervene under O. 15 r. 6 of the Rules of the High Court 1980. The grounds relied upon by MAIS to establish that it has "interest" for the said intervention in the main proceedings, is that it was a statutory body whose objectives were to, *inter alia*, aid and advice the Sultan to matters relating to the religion of Islam. It has the duty to promote, stimulate, facilitate and undertake the economic and social development of the Muslim community in the State of Selangor consistent with hukum syarak.

[41] In *Boong Boon Chuen*'s case, MAIS is not directly affected because the subject matter of the decisions under challenge involves a local authority matter. It is clear that "local authority" does not fall within the authority of MAIS.

[42] However, in this present case, MAIWP as an authority in the Federal Territories in respect of the religion of Islam have particular knowledge and expertise in the area whether in terms of the effect which the declaration sought by the applicants may have upon the religion of Islam in this country particularly in the Federal Territories.

Conclusion

[43] In the circumstances of this case, I believe MAIWP can offer a perspective on the right of a non-Muslim to use the term "Allah" from the Islamic religion perspective. The court in my view can gain much from such intervention even if the argument in the end is not accepted.

[44] Accordingly, I gave permission for MAIWP to intervene in this proceeding.